

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**KIMBERLY EMERSON,**

Plaintiff,

vs.

**IRON MOUNTAIN INFORMATION  
MANAGEMENT SERVICES, INC. AND  
INFORMATION MOUNTAIN INCORPORATED,**

Defendants.

CASE NO. 20-CV-08607-YGR

**ORDER GRANTING MOTION FOR LEAVE TO  
FILE FIRST AMENDED COMPLAINT**

Re: Dkt. No. 36

On October 15, 2021, plaintiff Kimberly Emerson filed this employment discrimination action against defendants Iron Mountain Information Management Services, Inc., (“IMIMS”) and Iron Mountain Incorporated (“IM”). Currently pending is plaintiff’s motion for leave to file a first amended complaint (“FAC”), seeking to substitute Iron Mountain Information Management, LLC (“IMIM”) as Doe Defendant No. 1 and to add allegations of fact supporting a pattern of disability discrimination, among other changes. (Dkt. No. 36.) Pursuant to the Court’s scheduling order (Dkt. No. 19), any motions to amend pleadings at this point in the proceedings require a showing of good cause pursuant to Rule 16(b)(4). The Court finds such good cause and therefore **GRANTS** the motion.

Pursuant to General Order 71, on January 4, 2021, defendants identified Gia Allen, Michelle Coffey, Michael Mahoney, and Sarah Rook as persons “known to defendant[s] who were involved in making the decision to take the adverse action.” (Dkt. No. 36-1, ¶ 10.) By e-mail dated January 21, 2021, defendants advised plaintiff that Allen was employed by IMIMS and that Mahoney, Coffey, and Rook were employed by IMIM. (Dkt. No. 40-1 at 34.) That email also

1 stated that IMIM converted to IMIMS and that the former ceased to exist. (*Id.*) On March 12,  
 2 2021, in response to written discovery requests propounded by plaintiff on January 20, 2021,  
 3 including a request for organizational charts, defendants again identified Mahoney, Coffey, and  
 4 Rook as employees of IMIM but did not produce documents evidencing as much. (Dkt. No. 36-1,  
 5 ¶ 12.) On April 16, 2021, following the unsuccessful mediation conducted that day, plaintiff  
 6 requested to meet and confer with defendants regarding their allegedly defective written discovery  
 7 responses. (*Id.* ¶ 14.) A meet and confer occurred on May 3, followed by plaintiff sending  
 8 defendant a proposed joint discovery letter on May 5. (*Id.* ¶¶ 15–16.) Defendants did not send the  
 9 initial draft of their portion of the joint discovery letter until May 21. (*Id.*) Plaintiff submits that  
 10 she finally was compelled to add IMIM as a party to this action when, “[o]n June 2, 2021 defense  
 11 counsel removed the reference of deponent Mr. Mahoney as an employee of the Defendants and  
 12 asserted that he is only an employee of IMIM LLC for purposes of deposition.” (*Id.* ¶ 17.) On  
 13 June 3, plaintiff’s counsel requested defendants’ agreement to a stipulation to join IMIM as a  
 14 named defendant because IMIM “was, and may still be, a direct employer of Plaintiff . . . .” (Dkt.  
 15 No. 36-4.)<sup>1</sup>

16 Defendants “were open to stipulat[ing] to the filing of the proposed [FAC] in order to  
 17 avoid further law and motion.” (Dkt. No. 40 at 4.) However, after the stipulation drafted by  
 18 plaintiff’s counsel resulted in additional revisions, the parties were unable to resolve one last  
 19 change. Specifically, on June 23, defendants proposed the following addition to the stipulation:  
 20 “WHEREAS, on January 21, 2021, Defendant Iron Mountain Information Management Services,  
 21 Inc. (“IMIMS”) notified Plaintiff that three witnesses identified by Plaintiff were employed by  
 22 Iron Mountain Information Management, LLC (“IMIM”) and not by IMIMS.” (Dkt. No. 36-1, ¶  
 23 25.) In response, plaintiff’s counsel suggested adding “Defendants contend” to the proposed  
 24 recital purportedly in order to put things in context. (*Id.* ¶ 26.) On July 8, defense counsel  
 25 communicated that she could not agree to this suggestion. (*Id.* ¶ 27; *see also* Dkt. No. 40-1.)

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 27 <sup>1</sup> “Due to independent investigation after this case was filed, [plaintiff’s counsel] learned  
 28 that IMIM LLC was listed as the payor on Plaintiff’s 2013 IRS-W-2 Forms.” (Dkt. No. 36-1, ¶ 28.)

1 Within a week of this communication, on July 13, plaintiff filed the instant motion.

2 A request to amend a pleading after the Court's deadline for doing so implicates both Rule  
3 15 and 16.<sup>2</sup> Rule 16(b) governs the issuance and modification of pretrial scheduling orders, and  
4 Rule 15(a) governs amendment of pleadings. Fed. R. Civ. P. 16(b) and 15(a). "Rule 16(b)'s  
5 'good cause' standard primarily considers the diligence of the party seeking the amendment."  
6 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Under Rule 15(a),  
7 "[t]he four factors commonly used to determine the propriety of a motion for leave to amend are  
8 bad faith, undue delay, prejudice to the opposing party, and futility of amendment." *Abels v. JBC*  
9 *Legal Group, P.C.*, 229 F.R.D. 152, 155–56 (N.D. Cal. 2005) (citing *Foman v. Davis*, 371 U.S.  
10 178, 182 (1962)).

11 In evaluating plaintiff's diligence for purposes of Rule 16, the Court considers defendants'  
12 argument that plaintiff unduly delayed in seeking the proposed amendments. Defendants point to  
13 the period between January 21, 2021, when they first advised plaintiff that the decisionmakers of  
14 the alleged adverse action were employed by IMIM, and June 3, 2021, when plaintiff requested  
15 the amendment to join IMIM. (Dkt. No 40 at 4.) However, the Court is not persuaded by  
16 defendants' claim of undue delay because up until recently, they had been "open to stipulat[ing] to  
17 the filing of the proposed [FAC] in order to avoid further law and motion." (*Id.*) Defendants  
18 cannot now point to a failure of diligence on the part of plaintiff when, up until June 23, they  
19 evidently did not consider any delay at that point so "undue" that they could not agree to the  
20 stipulation for the filing of the FAC.<sup>3</sup> Because the motion to amend was filed with reasonable  
21 diligence after nearly securing such stipulation, the Court finds good cause to permit the filing of  
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23 <sup>2</sup> See Phillips, J. and Stevenson, J., FED. CIV. PRO. BEFORE TRIAL (Rutter Group Prac.  
24 Guide) § 15:32 ("Once the scheduling order deadline has passed, Rule 16(b)(4) requires a party to  
25 show 'good cause' before being granted leave to amend the pleadings, *in addition to* the showing  
required under Rule 15.") (emphasis in original).

26 <sup>3</sup> In addition, the Court finds any delay to add IMIM as a named defendant not  
27 unreasonable, particularly in light of plaintiff's initial written discovery requests propounded  
28 shortly after defendants' General Order 71 disclosures. Plaintiff specifically requested  
organizational charts presumably to determine the relationship between the various entities and  
made subsequent efforts to resolve what she believed was a deficient discovery response by  
defendants in this regard. (Dkt. No. 36-1, ¶¶ 11–16.)

1 the FAC pursuant to Rule 16(b)(4).

2 Further, considering the factors applicable to leave to amend under Rule 15, the Court does  
3 not find bad faith, undue delay, prejudice to defendants, or futility of the proposed amendment.  
4 First, defendants do not suggest any bad faith or futility of the proposed amendments. Indeed, the  
5 party sought to be added, IMIM, appears to be wholly owned by defendant IM, and IMIM itself  
6 appears to be a second-level parent of defendant IMIMS.<sup>4</sup> In other words, a joint employment  
7 relationship may exist between the currently named defendants and the proposed defendant. Thus,  
8 the Court cannot conclude that any bad faith exists in seeking the proposed amendments or that  
9 such amendments would be futile.

10 Moreover, as discussed above, the Court is not persuaded that plaintiff unduly delayed in  
11 bringing this motion. Lastly, defendants argue that they will be “highly prejudic[ed]” by the  
12 proposed amendments. (Dkt. No. 40 at 4.) However, defendants’ claim of prejudice is predicated  
13 entirely on the alleged delay and therefore appears disingenuous given their recent willingness to  
14 agree to the proposed amendments. Defendants do not otherwise explain how they would suffer  
15 prejudice, apart from the delay.<sup>5</sup> See *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052  
16 (9th Cir. 2003) (“Prejudice is the touchstone of the inquiry under Rule 15(a).”) (internal quotations  
17 and citations omitted). Thus, plaintiff meets the objective factors for granting leave to amend.

18 Accordingly, the motion for leave to file the FAC is **GRANTED**. Plaintiff shall file the  
19 proposed FAC within **3 court days** of issuance of this Order. Defendants shall file their response  
20 within **10 calendar days** thereafter.

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23 <sup>4</sup> Plaintiff’s counsel avers that defendants responded to the discovery request for  
24 organization charts as follows: “Defendant Iron Mountain Incorporated wholly owns Iron  
25 Mountain Information Management, LLC. Iron Mountain Information Management, LLC wholly  
26 owns Iron Mountain US Holdings, Inc., which wholly owns Defendant Iron Mountain Information  
Management Services, Inc.” (Dkt. No. 36-1, ¶ 12.) However, counsel’s declaration did not attach  
the discovery response itself.


27 <sup>5</sup> Defendants’ response brief primarily points to plaintiff’s delay in other matters of this  
28 litigation, including her refusal to sit for a deposition, a dispute which has since been handled by  
Magistrate Judge Tse. These other matters of delay, while concerning, do not address the issue of  
prejudice suffered by defendants if the proposed amendments were permitted.

1           **The parties are reminded that federal courts are incredibly busy. They should not be**  
2           **filing motions where reasonable stipulations can achieve the same result without the need for**  
3           **judicial intervention or prejudice to either side.**

4           This Order terminates Docket Number 36.

5           **IT IS SO ORDERED.**

6           Dated: September 22, 2021

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE

United States District Court  
Northern District of California